

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 243 OF 2006
IN
CONTEMPT NOTICE OF MOTION NO. 3308 OF 2004
IN
S.C. SUIT NO. 978 OF 2000

Masuk Ali Khan, ... Appellant.
Vs.
Kandthil Chacko Williams and another. Respondents.

Mr. R.P. Singh for appellants.
Mr. Anil Singh for Respondent No.1.

WITH
APPEAL FROM ORDER NO. 568 OF 2006
with
Civil Application No. 734 of 2006
IN
CONTEMPT NOTICE OF MOTION NO. 3308 OF 2004
IN
S.C. SUIT NO. 978 OF 2000

Mukhtar Appellant.
Vs.
Kandthil Chacko Williams and others. Respondents.

Mr. A. R. Shaikh for appellants.

CORAM:D. G. KARNIK J.
DATE: 16/8/2006

P.C.:

1. A. O. No. 243 of 2006 is filed by the original defendant no. 1 against the order dated 13th February, 2006

passed in contempt notice of motion no. 3308 of 2004 holding him guilty of breach of the order dated 23rd June, 2004 and ordering him to undergo civil imprisonment for a term of one month. A. O. No. 568 of 2006 is filed by defendant no. 2 against the order dated 15th July, 2006 in the same contempt Notice of Motion no. 3308 of 2004 holding him guilty of the breach of order of injunction dated 23rd June, 2004 and ordering him to undergo civil imprisonment for a term of one month. As both the orders are passed on the same motion under order 39, Rule 2 (a) of the Code of Civil Procedure and the breach alleged in both the matters is identical, both the appeals are heard and disposed of by this common order.

2. For the sake of convenience, the parties in this appeal are referred by their original status in the suit. The plaintiff filed a suit, bearing No. 968 of 2000, against defendant nos. 1 and 2 in the City Civil Court at Bombay, for an injunction restraining them from encroaching, trespassing or putting up further construction on the plaintiff's plot of land bearing survey no. 9, part I, village Varalay, MIDC, Andheri (E), Mumbai. In the plaint the plaintiff did not give full description of the property of which he claimed to be the owner and claimed an injunction. In para 1 of the plaint he only stated that he was carrying on the

business from survey no. 9, Part I, Village Varalay, MIDC, Andheri (E), Mumbai, without giving the area, description or even the boundaries of the property. In para 3 of the plaint he stated that the area of the open land owned by the plaintiff was 795.50 sq.meters, and that there was one structure thereon admeasuring 70 sq. meters. Counsel for the parties have produced for my inspection the 7/12 extract of survey no.9. From the said 7/12 extract, it appears that the area of survey no.9 is 2 Hectors and 22.51 Ares. The plaintiff appears to be owner of a minuscule part of it which is not described properly so as to identify it. In the prayer clause again the plaintiff has not given any description of the property but has only claimed injunction restraining the defendants from encroaching upon the property bearing survey no. 9, Part I, without giving its area, description or boundaries.

3. On the interim application of the plaintiff the City Civil Court granted injunction by its order dated 23rd June, 2004 restraining the appellants from encroaching upon the plaintiff 's property. The plaintiff has thereafter filed an application, bearing contempt notice of motion no. 228 of 2004 in the City Civil Court, alleging that the defendant Nos. 1 and 2 had committed breach of the order of injunction dated 23rd June, 2004 and therefore, action be taken against them under Order 39 Rule 2

(a) of Civil Procedure Code. By the two orders referred to above the trial court held that the defendants had committed breach of the order of injunction. Those two orders are impugned in this appeal.

4. The defendants denied the allegations. They denied that the cables were laid through the plaintiff 's property. They also said that the electric cables were laid even before the order of injunction was passed and they have not committed any beach of the injunction passed by the City Civil Court.

5. At the hearing of these appeals learned counsel for the plaintiff submitted that the defendants have committed two breaches of the order of injunction which have been specified in paras (iv) and (vi) of the contempt motion. In para (iv) it is alleged that on 14th August 2004 Reliance Energy Ltd., (for short "REL") entered into the plaintiff' s property and laid electric cables for supplying electric energy to the defendants property. In Para (vi) of the contempt application it is alleged that on 15th August 2004 defendants entered into the plaintiff 's building by opening the rolling shutter and started made a hole in their structure, to facilitate passing of the electric cables which were allegedly laid by REL through the plaintiff' s ~~pr~~erty.

6. It must be stated at the outset that the plaintiff is not the owner of the whole of survey no.9. The total area of survey no. 9 is 22 Hectors and 22.51 Ares. There are several owners occupying different parts of survey no.9. A portion of survey no. 9 is occupied by the defendants. The defendants and several others are running their businesses in the respective parts of survey no.9 in their occupation. There appears to be no separate revenue record showing the boundaries of different parts occupied by the defendants and other owners. In fact there is nothing on record to show which part and which area is owned by different persons occupying survey no.9. In the plaint also the plaintiff has not specified the exact description of the part of survey no.9, Part I occupied by him. Under order 7 , Rule 3 of the Civil Procedure Code, it was incumbent upon the plaintiff to give boundaries of the property in his occupation, especially when survey no.9, is in occupation of different persons. Without such boundaries having set out, it is not possible to identify the property of the plaintiff, in respect of which injunction has been granted by the court. The defendants have stated that, they have been legitimately carrying on business in their part of the property and have taken electric connection from a third party, namely, REL. There is nothing on record to show that the cables laid by the third party, REL, are

passing through the property of the plaintiff. In the absence of the proper description of the property, it is impossible to ascertain the plaintiff's property and hold that the cables were laid through the plaintiff's property. It is therefore not possible to hold that the defendants have laid electric cables through REL and thereby committed breach of order of injunction dated 23rd June, 2004.

7. On record of Civil Application No. 323 of 2006 in A.O. No. 243 of 2006, a letter dated 11th May, 2005 written by REL to the defendants is produced. Therein it is stated that the cables were laid on 19th May, 2004. Thus, the cables were laid prior to the order of injunction. The plaintiff has not produced on record anything to show that the cables were laid after 23rd June, 2004. Except the bare averment of the plaintiff, there is no other independent evidence to show that the cables were laid by REL, at the instance of the defendants, after 23rd June, 2004. Thus it cannot be said that the defendants have committed any breach of the order dated 23rd June, 2004 by allowing REL to lay electric cables through the plaintiff's, after the order of injunction was passed. Similar is the case in respect of the allegation that the defendants entered into the plaintiff's property on 15th August, 2004 and made a hole in the property for the purpose of facilitating the

laying of electric cables through the plaintiff's property.

8. In the circumstances, the trial court committed an error in holding that the defendants had committed breach of the order of injunction rendered by the court on 23rd June, 2004.
9. For these reasons the appeals are allowed and the impugned orders are set aside. There shall be no order as to costs.
10. In view of the decision in these appeals there shall be no order on Civil Application No. 734 of 2006 in A.O. no. 568 of 2006.

(D. G. KARNIK J)

